IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 28TH DECEMBER 2007 / 7TH POUSHA 1929

WP(C).No. 38138 of 2007(M)

PETITIONER:

C.C.KURIAN, S/O. CHANDY,
AGED 54 YEARS, CHEMBAKKARA, KANIYAMBETTA POST &
VILLAGE, CYTHIRI TALUK, WAYANAD DISTRICT.

BY ADV. SMT.CELINE JOSEPH
SRI.GEORGE SEBASTIAN

RESPONDENTS:

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1. THE SPECIAL DEPUTY TAHSILDAR (RR),
K.S.F.E. LTD., KALLAT ROAD, KOZHIKODE - 2.

2. THE KERALA STATE FINANCIAL ENTERPRISES,
KALPETTA, WAYANAD.

3. E.B.MANOHARAN, AGED 46 YEARS,
EDATHARA HOUSE, PENGINICHLKKALLOOR AMSOM,
PULPADY DESOM, VYTHIRI TALUK, WAYANAD DISTRICT.

BY ADV. SRI.ASOK M.CHERIYAN, SC, K.S.F.E. LTD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. GIRI ,J.

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WP(C).No. 38138 of 2007

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Dated this the 28th day of December, 2007

JUDGMENT

Petitioner purchased an extent of 20 cents of land under Ext.P1 sale deed of the year 1995, from the 3rd respondent. Apparently, the said property along with another property had been mortgaged by the erstwhile loanee- the 3rd respondent, with the 2nd respondent, at the time of prizing the chit which was conducted by the 2nd respondent. In Ext.P3, there is a reference to the request made by the 3rd respondent for the release of documents covering 20 cents of land. Be that as it may, apparently, conveyance under Ext.P1 took place and according to the petitioner, he is in possession of the property. It seems that the 3rd respondent has defaulted payment of amounts and steps were taken against the properties belonging to the defaulter. The petitioner is aggrieved by Ext.P2 notice demanding an amount of Rs.2,40,376.70 from the petitioner as well. Under Ext.P2, there is a proposal to proceed against the property covered by Ext.P1. Hence this writ petition.

2. In my view, the petitioner has an efficacious remedy by way of a claim petition under the Revenue Recovery Act. If the

petitioner acquired title to the property prior to it is encumbrance with the 2nd respondent or at a point of time when it was not otherwise encumbered, then, unless it is found by the revenue officials that the sale is effected to defeat the interest of the creditor, the said property may not be available to be proceeded against at the instance of the 2nd respondent for the default of the 3rd respondent. I hasten make it clear that I am not expressing any opinion on the merits of the claim made by the petitioner.

3.I heard the learned counsel for the petitioner and the learned Government Pleader and the learned counsel for the 2nd respondent also.

4. In the facts and circumstances of the case and the nature of the directions proposed to be issued, it is not necessary to issue notice to the 3rd respondent.

4. In the result the writ petition is disposed of in the following terms.

i) The petitioner may file a claim petition before the 1st respondent within a period of six weeks from today, detailing his title to the property covered by Ext.P1.

ii) If such claim petition is received within the

aforementioned period, the 1 respondent shall issue notice to respondents 2 and 3 as also the petitioner, conduct an enquiry and then pass an order as to whether the property belonging to the petitioner is otherwise available for recovery of amounts due from the 3rd respondent. The petitioner is at liberty to bring to the notice of the 1st respondent, such materials as are available to substantiate his claim.

iii) The 1st respondent shall pass reasoned orders adverting to the above aspects within a period of three months from the date of receipt of the claim petition.

Further proceedings pursuant to Ext.P2 shall be kept in abeyance pending orders by the 1st respondent.

V. GIRI, JUDGE.

sj

/True copy/

P.A.TO JUDGE